REMARKS

The Non-Final Office Action mailed October 26, 2010, considered and rejected claims 18–26. Claims 18–22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 18–26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Barroso, U.S. Patent No. 6,389,003 (filed Nov. 23, 1999) (hereinafter Barroso), in view of Matsumoto et al., U.S. Patent No. 5,912,931 (filed Aug. 1, 1996) (hereinafter Matsumoto), and in view of Baker et al., U.S. Patent No. 5,067,139 (filed Dec. 17, 1990) (hereinafter Baker).[1]

By this response, claims 23–26 are represented without amendment for reconsideration. Claims 18–22 are cancelled. Claims 23–26 remain pending. Claims 23 and 25 are independent claims which remain at issue.

Claims 18–22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.[2] Claims 18–22 have now been cancelled.[3]

Claims 18–26, of which claims 23–26 remain pending and of which claims 23 and 25 are independent claims, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Barroso, U.S. Patent No. 6,389,003 (filed Nov. 23, 1999) (hereinafter Barroso), in view of Matsumoto et al., U.S. Patent No. 5,912,931 (filed Aug. 1, 1996) (hereinafter Matsumoto) in view of Baker et al., U.S. Patent No. 5,067,139 (filed Dec. 17, 1990) (hereinafter Baker).[4] The Applicants submit that each of these rejections are improper because Barroso fails to qualify as prior art.

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[1] Office Communication p. 2 *et seq.* (paper no. 20101021, Oct. 26, 2010).

Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting any official notice taken. Further, Applicant reserves the right to challenge the prior art status of any cited art which is not particularly challenged herein at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Office Comm. p. 2.

[3] Cancellation of claims 18–22 should not be considered to evince any concession on the part of the Applicant as to the validity of any asserted rejection(s). The Applicants hereby reserve the right to represent and pursue any cancelled subject matter, such as in a continuation application, at any future time as may be considered desirable or appropriate.

[4] Office Comm. p. 5 *et seq.*

The Applicants note that Barroso was filed on November 23, 1999 and was published on May 14, 2002. The Applicants also note that the present application is a divisional application of U.S. Pat. App. Ser. No. 09/403,161 which is the national phase entry of international application PCT/JP98/01786. The international filing date of PCT/JP98/01786 is April 17, 1998.

As Barroso was filed *after* the international filing date of PCT/JP98/01786, Barroso fails to qualify as prior art under 35 U.S.C. § 102. Because each rejection of claims 23–26 under 35 U.S.C. § 103(a) relies upon Barroso – which is disqualified as prior art – the rejections of claims 23–26 under 35 U.S.C. § 103(a) are improper and should be withdrawn.

Accordingly, the Applicants respectfully request the rejections of claims 23–26 under 35 U.S.C. § 103(a) as being unpatentable over Barroso, in view of Matsumoto, and in view of Baker now be withdrawn. Further, as there are no further unaddressed rejections of claims 23–26, the Applicants submit that claims 23–26 are now in condition for allowance and respectfully request their prompt allowance.

In view of the foregoing, the Applicants respectfully submit that other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as the Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, the Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, the Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefore and charge any additional fees that may be required to Deposit Account No. 23-3178.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 26th day of January, 2011.

Respectfully submitted,

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